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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,883	08/10/2004	Vincent Bove	7298.125.NPUS00	7967
68768 7590 12/09/2009 NOVAK DRUCE AND QUIGG, LLP (Thule) 1000 LOUISIANA STREET FIFTY-THIRD FLOOR HOUSTON, TX 77002				
EXAMINER VANTERPOOL, LESTER L				
ART UNIT		PAPER NUMBER		
3782				
MAIL DATE		DELIVERY MODE		
12/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/710,883

Applicant(s)

BOVE ET AL.

Examiner

LESTER L. VANTERPOOL

Art Unit

3782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15-21, 23, 24, 30, 31 is/are rejected.
- 7) ☒ Claim(s) 13, 14 and 25-29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 4, 5 & 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 does not recite a method step, or a method of manufacturing, or a method of using or a method of processing the load carrier arrangement. Therefore, claim 4 is not a proper method claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 – 12, 15 – 21, 23, 24, 30 & 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Newbold et al., (U.S. Patent Number 5259542).

Newbold et al., discloses the frame assembly (10) adapted to be mounted to the carrying vehicle (14), the frame assembly (10) comprising at least one elongate arm (30 & 32) configured to receive the bicycle cradle (See Figure 4) thereupon;

the bicycle cradle (59, 61A & 61B) mounted upon the arm (30 & 32) and being operator configurable between the bicycle transporting configuration and the non-transporting configuration;

the cradle (See Figure 4) having at least two spaced apart and aligned through-passages within which the elongate arm is received in the non-transporting configuration, the cradle being operator reciprocal on the elongate arm in the non-transporting configuration thereby facilitating variable longitudinal positioning of the cradle by the operator upon the arm;

the cradle (See Figure 4) having the increased resistance to longitudinal reciprocation on the elongate arm in the bicycle transporting configuration in comparison to the non-transporting configuration and thereby being effectively longitudinally fixed on the elongated arm in the bicycle transporting configuration to the extent that the secured portion of the carried bicycle in the cradle (59, 61A & 61B) is longitudinally fixed relative to the elongated arm (30A) during transport on the load carrier arrangement.

Regarding claim 2, Newbold et al., discloses the frame assembly (10) adapted to be mounted to the carrying vehicle (14), the frame assembly (10) comprising at least one elongate arm (30 & 32) configured to receive the bicycle cradle (See Figure 4) thereupon;

the anchor means for fixing the bicycle upon the arm, the anchor means being adapted for operator configuration between the bicycle transporting configuration and the non-transporting configuration;

the anchor means having at least two spaced apart and aligned through-passage within which the elongate arm is received in the non-transporting configuration and which is adapted for being operator reciprocated on the elongate arm (30 & 32) in the non-transporting configuration for establishing variable longitudinal positioning of the anchor means by the operator upon the arm (30 & 32); and

the anchor means having the increased resistance to longitudinal reciprocation on the elongate arm (30 & 32) in the bicycle transporting configuration in comparison to the non-transporting configuration for being effectively longitudinally fixed on the elongate arm in the bicycle transporting configuration to an extent that the secured portion of the carried bicycle in the anchor means is longitudinally fixed relative to the elongate arm (30A) during transport on the load carrier arrangement (See Figures 1 & 4).

Regarding claim 3, Newbold et al., discloses the anchor means is bicycle cradle (See Figure 1).

Regarding claim 4, Newbold et al., discloses the method step of providing the load carrier arrangement (See Figure 1) for transporting the bicycle (25) when secured thereupon, the method step comprising: utilizing the load carrier arrangement (See

Figure 1) having the frame assembly (10) mounted to the carrying vehicle (14) and that includes the elongated arm (30A) configured to receive the bicycle cradle thereupon to transport the bicycle (25), the bicycle cradle (See Figure 4) being operator configurable between the bicycle transporting configuration in which the cradle is tight-fitting upon the arm and the non-transporting configuration in which the cradle is comparably loose-fitting upon the arm (30 & 32); and reconfiguring the bicycle cradle to the non-transporting configuration after transporting use and thereby limiting strain induced, cold-flow creep in the bicycle cradle that results in the reduction of tightness of fit of the cradle upon the arm (30 & 32) to periods when the bicycle transporting configuration being assumed, wherein the cradle has at least two spaced apart and aligned through-passages within which the elongate arm (30 & 32) is received in the non-transporting configuration (See Column 4, lines 34 – 37).

Regarding claim 5, Newbold et al., discloses preserving the designed tightness-of-fit of the cradle (See Figure 4) upon the arm (30 & 32) during bicycle transporting configuration by the limitation of strain induced, cold-flow creep in the bicycle cradle.

Regarding claim 6, Newbold et al., discloses the cradle (See Figure 4) has the through-passage within which the elongate arm (30 & 32) is received, the cradle (See Figure 4) being operator reciprocal on the elongate arm(30) in the non-transporting configuration thereby facilitating variable longitudinal positioning of the cradle by the operator upon the arm; and the cradle (See Figure 4) having the increased resistance to

longitudinal reciprocation of the elongate arm (30 & 32) in the bicycle transporting configuration in comparison to the non-transporting configuration and thereby being effectively longitudinally fixed on the elongate arm (30 & 32) in the bicycle transporting configuration to the extent that the secured portion of the carried bicycle in the cradle is longitudinally fixed relative to the elongated arm (30 & 32) during transport on the load carrier arrangement.

Regarding claim 7, Newbold et al., discloses the cradle (See Figure 4) comprises the plurality of cradle pieces (62A, 62B, 58 & 59).

Regarding claim 8, Newbold et al., discloses each aperture is the through-passage is constituted by the series of apertures, one each located in one of the plurality of the cradle pieces (62A, 62B, 58 & 59) (See Figures 1 & 4).

Regarding claim 9, Newbold et al., discloses the series of apertures constituting the through-passage are in series and sufficiently aligned in the longitudinal direction in the non-transporting configuration to achieve the facilitation of variable longitudinal positioning of the cradle (See Figure 4) by the operator upon the arm (30 & 32) (See Figures 1 & 4).

Regarding claim 10, Newbold et al., discloses at least one of the series of apertures constituting the through-passage is sufficiently misaligned in the transporting

configuration to establish the binding effect between the cradle and the elongate arm (30 & 32) and thereby effects the longitudinal fixation of the cradle on the elongate arm (30 & 32) in the bicycle transporting configuration (See CL1 & CL2 in Column 4, lines 8 – 13) (See Figure 5).

Regarding claim 11, Newbold et al., discloses the cradle (See Figure 4) from the non-transporting configuration to the bicycle transporting configuration establishes the binding effect between the cradle (See Figure 4) and the elongate arm (30 & 32) sufficient to establish the anchor for the secured portion of the carried bicycle (25) in the cradle during transport (See Figures 1 & 4).

Regarding claim 12, Newbold et al., discloses the cradle (See Figure 4) comprises the plurality of variably configurable cradle portions, at least one of the cradle portions being the biding assembly that more forcefully abuts the elongate arm (30 & 32) in the bicycle transporting configuration than in the non-transporting configuration.

Regarding claim 15, Newbold et al., discloses the through-passage comprises the series of apertures, at least one of which is configured in the non-transporting configuration to accommodate reciprocation of the elongate arm (30 & 32) therein and is reoriented in the bicycle transporting configuration to bind on the elongate arm (30 & 32) and resist reciprocation of the elongate arm (30 & 32) therein (See Figures 4 & 5).

Regarding claim 16, Newbold et al., discloses different portions of the cradle (see Figure 4) are constructed from different durometer material (See Column 5, lines 43 – 48).

Regarding claim 17, Newbold et al., discloses at least one portion of the cradle (See Figure 4) is constructed from the plastic susceptible to cold-flow creep (See Column 5, lines 43 – 44).

Regarding claim 18, Newbold et al., discloses portions of the cradle establishing the tightenable fit to the arm (30 & 32) are constructed from the material susceptible to cold-flow creep, the portions experiencing creep effects when tightened upon the arm (30 & 32) in the bicycle transporting configuration and the portions experiencing reduced creep effects when loosened upon the arm (30 & 32) in the non-transporting configuration in comparison to when in the bicycle transporting configuration.

Regarding claim 19, Newbold et al., discloses the material of construction is plastic.

Regarding claim 20, Newbold et al., discloses the cradle further comprises the base for receiving the bicycle frame tube (27) and the variably adjustable, flexible retaining strap (See Figure 1) for anchoring the bicycle frame tube (27) in the base.

Regarding claim 21, Newbold et al., discloses the base further comprises the ribbed bicycle-engaging surface for resisting twisting action of the bicycle frame tube in the base (i.e. Ends 61A, 61B with 59 recess as ribbed bicycle engaging surface).

Regarding claim 23, Newbold et al., discloses the cradle (See Figure 4) comprises the plurality of variably configurable cradle portions, at least one of the cradle portions being the binding assembly that more forcefully abuts the elongate arm (30 & 32) in the bicycle transporting configuration than in the non-transporting configuration, the binding assembly being actuated by the flexible retaining strap (118) configured to releasably anchor the bicycle frame tube (27) in the base (See Figure 1).

Regarding claim 24, Newbold et al., discloses the through-passage being variably constricting upon the arm (30 & 32) between the bicycle transporting configuration and the non-transporting configuration.

Regarding claim 30, Newbold et al., discloses each of the apertures continuously encircles the elongate arm (30 & 32) See Figure 4).

Regarding claim 31, Newbold et al., discloses the cradle (See Figure 4) further has the elastomeric component located proximate to the through-passage where during transporting configuration the elastomeric component is frictionally biased against the elongate arm (30 & 32) thereby causing the binding effect interposed therebetween

whereby resistance to longitudinal reciprocation is increased (See Column 4, lines 27 – 44).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newbold et al., (U.S. Patent Number 5259542).

Newbold et al., does not disclose the base further comprises the fastening tab and the retaining strap comprises fastening holes that cooperatively constitute the custom-fit securement mechanism for anchoring the bicycle (25) in the cradle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make straps with apertures tabs on cradle to hold, since straps with apertures tabs on cradle to hold equipment is well known in the art.

Allowable Subject Matter

6. Claims 13, 14, 25, 26, 27, 28 & 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments, see pages 9 – 12, filed June 09, 2009, with respect to the rejection(s) of claim(s) 1 – 16, 18, 18, 20, 22 – 26, 30 & 31 under 35 U.S.C. 102(b) as being anticipated by Allen et al., (U.S. Patent Number 6336580 B1) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 35 U.S.C. 102(b) as being anticipated by Newbold et al., (U.S. Patent Number 5259542).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lassanske et al., (U.S. Patent Number 6386407); Erickson et al., (U.S. Patent Number 6516986); Robins et al., (U.S. Patent Number 6286738 B1); Robins et al., (U.S. Patent Number 6467664 B2); and Bloemer et al., (U.S. Patent Number 5573165).

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LESTER L. VANTERPOOL whose telephone number is (571)272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782